

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of) ET-Docket No. 93-62
Guidelines for Evaluating the Environmental) and Report and Order FCC 96-326
Effects of Radiofrequency Radiation)

To: The Commission

DOCKET FILE COPY ORIGINAL

"Late Filed" Motion to Accept a Petition For Reconsideration After The Filing Date

This motion is hereby respectfully being submitted to the Commission by the Ad-hoc Association of Parties Concerned About the Federal Communications Commission's Radiofrequency Health and Safety Rules ("the Association") to accept in accordance with 47 CFR Part 1 §1.46(b) the enclosed Petition For Reconsideration for full consideration on its merits even though it is being filed on September 9, 1996, one business day after the filing date of September 6, 1996, as hurricane weather conditions resulting in emergency road conditions occurred to prevent its being timely filed, and its filing would be in the public interest.

On Friday, September 6, 1996 the Association (see some members in Exhibit A) and other parties listed in Exhibit B which are parties subscribing to the enclosed Petition for Reconsideration of the Commission's Report and Order FCC 96-326 published in the Federal Register on August 7, 1996 Vol.61, No. 153, page 41006-41019 (the "Petition") attempted to file this petition in a timely manner at the office of the Secretary of the Commission as provided for in §1.4(b)(1) and §1.429, and a courier service, Kinkos, was used to accomplish such timely filing.

After the close of business on September 6, 1996 we learned from the courier service, see statement in Exhibit C, that it set out to deliver our materials thinking there was time to arrive at the Secretary's office within the required time, but that weather conditions due to hurricane Fran resulted in flooding of streets and associated emergency road conditions so that it was unable to

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arrive during business hours at the Secretary's office, but only arrived a few minutes after the close of business at 1919 M Street NW, Washington DC 20554.

As the spokesperson responsible for filing the Petition for Reconsideration of the Association et al, and living in Seattle Washington, I was unaware of the specific local weather conditions near the Commission and how they may create emergency road conditions of flooding and other emergency conditions which may cause the Petition not to be filed in a timely manner. Had it not been for these emergency road conditions the courier would have arrived at an appropriate time and the enclosed Petition would have been filed in a timely manner. Thus, this small violation of little consequence would not have occurred except for the exceptional weather and resulting emergency road conditions due to hurricane Fran.

Furthermore the Commission should know the Petition being filed with this motion has been in the possession of the courier service since their attempted delivery on September 6, 1996 and thus the petitioners have not enjoyed any more time than others filing petitions of reconsideration in this matter. Finally, the Commission's granting the request of this motion will serve the public interest as there are many important issues related to the public health and safety addressed in this petition which will serve the public interest and the public confidence by being considered by the Commission. These issues in the Petition include indications exposure criteria and criteria for categorical exemption of an environmental assessment may not be sufficiently consistent with the information in the record and not sufficiently protective of the public health - a matter about which the Commission has stated it is very concerned.

While 47 CFR Part 1 §1.46(a) indicates that it is the policy of the Commission that extensions of time shall not be routinely granted, it is also noted that in §1.46(b) that in emergency situations, the Commission will consider a late filed motion for a brief extension of time related to the duration of the emergency and may consider such motions after the filing date. It is requested on this basis and on the foregoing considerations that the Commission grant this motion.

Respectfully Submitted on behalf of Ad-Hoc Association of Parties Concerned About the
Federal Communications Commission's Radiofrequency Health and Safety Rules et al

Signature: 

Spokesperson for Ad-Hoc Association of Parties Concerned About the Federal Communications
Commission's Radiofrequency Health and Safety Rules et al

PO Box 7577

Olympia, Washington 98507-7577

Telephone: (206) 722-8306

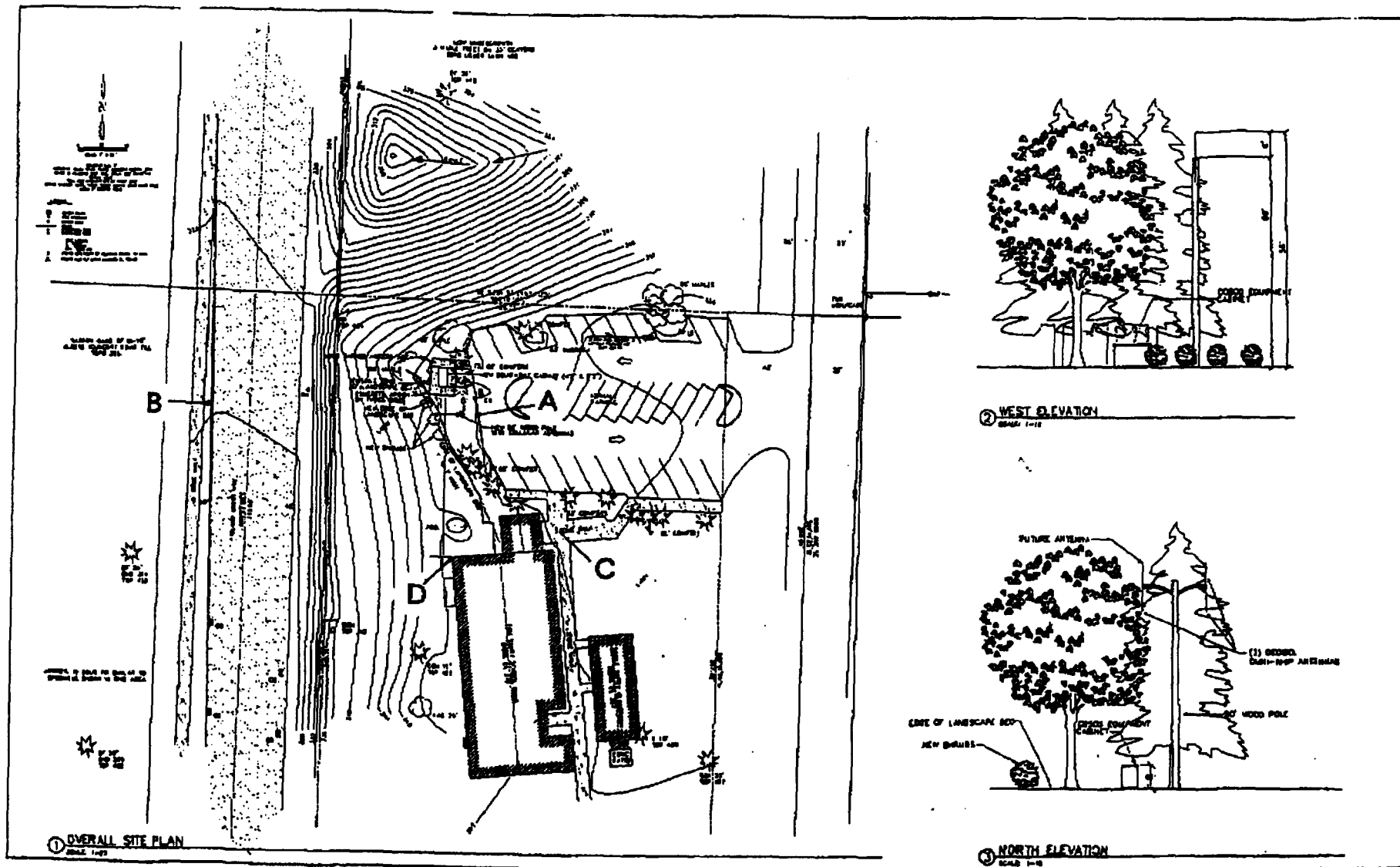
Verification: I declare under penalty of perjury that the foregoing is true and correct. Executed

on September 8, 1996 (date)

 (Signature)

Submitting one original and fourteen copies to the Secretary, Federal Communications
Commission, 1919 M Street, N.W., Room 222, Washington D.C., 20554

Exhibit A - Some members of the Association



CELLULARONE

NO.	DATE	REVISION

**MERCER CREST CELL SITE
SITE PLAN**

**S020
A-2**



CITY OF MERCER ISLAND, WASHINGTON
9611 S.E. 36 St. • Mercer Island, WA 98040-3732

February 3, 1995

Ms. Laurel Van Eaton
Cellular One
617 Eastlake Avenue E.
P.O. Box 9159
Seattle, WA 98109

RE: Approval of Variance for Mercer Island Cell Site

Dear Ms. Van Eaton,

This is to notify you of the City's approval of Cellular One's request for a height variance to allow for a 50 foot tall wood pole in lieu of the 35 foot pole allowed by the zoning code. This variance is allowed on the condition that all requirements for the conditional use permit granted for this site will be met.

Section 19.04.0606, Antennas, Mercer Island Zoning Code, (J) states that if strict application of the provisions (of the Code) would preclude an antenna from receiving or transmitting a usable signal...an application for variance may be filed under the provisions of Section 19.04.1404. The Code Official may grant a variance upon finding that the criteria set forth in Section 19.04.1404(B) are met and that either of the following criteria are met:

- 1) Compliance with the above provisions would prevent the antenna from receiving or transmitting a usable signal; and the alternatives proposed constitute the minimum necessary to permit acquisition or transmission of a usable signal, or
- 2) The alternatives proposed have less impact on adjacent property owners than strict application of the above provisions.

Cellular One met the criteria for pursuing a variance request. Subsequently, Staff used the following criteria from Section 19.04.1404(B) in evaluating your variance request.

1. Special circumstances applicable to the lot or tract, (such as size, shape, topography, location or surroundings, uses or ground cover or other physical conditions):

The use of a cellular antenna has been approved by the City for this site. The elevation of this site is such that a 50 foot tall pole is necessary for the signals to operate on "line of sight" and not be obstructed by hills and/or other buildings.



may

49

14/5

15

**Please call if you have any questions about the variance.
Sincerely,**

Lisa Krupp-Wilmeth
Development Services

1

All who request membership are admitted as members of the Ad-Hoc Association of Parties Concerned About the Federal Communications Commission Radiofrequency Health and Safety Rules

I wish to be a member of the Ad-Hoc Association of Parties Concerned About the Federal Communications Commission's Radiofrequency Health and Safety Rules and I subscribe to the Petition Of Reconsideration to Federal Communications Commission to be submitted by this association to the Commission.

I recognize David Fichtenberg as the spokesperson for this association in the matter of filing a petition for reconsideration of the Commission Final Rule and Order FCC 96-326, and in related matters.

Signed: *Arthur Fichtenberg*

Address: *P.O. Box 100404, Brooklyn, NY 11210*

Date: *Aug. 30, 1996*

I am presently directly affected by radiofrequency exposure from a telecommunications facility
☐ NO ☒ YES

If yes, please explain.

If live immediately near a telecommunications facility please describe specifically the proximity of residence to the telecommunications site. Please provide a drawing or map showing the location of the telecommunications facility and residence.

If child is going to a school with a telecommunications facility on or near the school or to a school with a permit approved for such a facility on or near the school please describe and indicate if the facility is built or only approved. Please provide a map or drawing if possible describing the location of the telecommunications facility.

I have electromagnetic hypersensitivity. Already much of Manhattan is inaccessible to me, especially any location above the 15th floor of buildings because of the cumulative effect of rooftop antennas. Worldview Plaza on W. 50th St between 8th + 9th Aves is inaccessible because of a cellular station atop a nearby building. New York City is poised to issue a Request for Proposal for 3,000 lamp-post-top antennas, thus threatening my freedom to live here altogether.

All who request membership are admitted as members of the Ad-Hoc Association of Parties Concerned About the Federal Communications Commission Radiofrequency Health and Safety Rules

I wish to be a member of the Ad-Hoc Association of Parties Concerned About the Federal Communications Commission's Radiofrequency Health and Safety Rules and I subscribe to the Petition Of Reconsideration to Federal Communications Commission to be submitted by this association to the Commission.

I recognize David Fichtenberg as the spokesperson for this association in the matter of filing a petition for reconsideration of the Commission Final Rule and Order FCC 96-326, and in related matters.

Signed:



Address:

Cathy Bergman
410 West 53rd Street, #402
New York, NY 10019

Date:

August 29, 1996

I am presently directly affected by radiofrequency exposure from a telecommunications facility

NO

xxx YES

If yes, please explain SEE BELOW

If live immediately near a telecommunications facility please describe specifically the proximity of residence to the telecommunications site. Please provide a drawing or map showing the location of the telecommunications facility and residence.

If child is going to a school with a telecommunications facility on or near the school or to a school with a permit approved for such a facility on or near the school please describe and indicate if the facility is built or only approved. Please provide a map or drawing if possible describing the location of the telecommunications facility.

There are a number of cellular transmitting facilities in my neighborhood within a two block radius of my home. In addition, I can see four cellular transmitting devices on the rooftops of adjoining buildings from my office window. My office is on the 35th floor of a building on the west side of Manhattan and these cellular transmitting devices are at eye level.

Further, the City of New York has a pending proposal to erect over 3,000 cellular antennas on lampposts though New York City. The newspaper has announced the cellular industry's plan to "blanket the city" in cellular antennas. This will create a unescapable radiation blanket. The City will not listen to concerns that have been expressed about health and safety issues because of the Telecommunications Act of 1996.

All who request membership are admitted as members of the Ad-Hoc Association of Parties Concerned About the Federal Communications Commission Radiofrequency Health and Safety Rules

I wish to be a member of the Ad-Hoc Association of Parties Concerned About the Federal Communications Commission's Radiofrequency Health and Safety Rules and I subscribe to the Petition Of Reconsideration to Federal Communications Commission to be submitted by this association to the Commission.

I recognize David Fichtenberg as the spokesperson for this association in the matter of filing a petition for reconsideration of the Commission Final Rule and Order FCC 96-326, and in related matters.

Signed:

Address:

Date:

Marijn Hughes
2400 Virginia Avenue, NW #C501
Washington, DC 20037
8/28/96

I am presently directly affected by radiofrequency exposure from a telecommunications facility
☐ NO ☒ YES

If yes, please explain.

If live immediately near a telecommunications facility please describe specifically the proximity of residence to the telecommunications site. Please provide a drawing or map showing the location of the telecommunications facility and residence.

If child is going to a school with a telecommunications facility on or near the school or to a school with a permit approved for such a facility on or near the school please describe and indicate if the facility is built or only approved. Please provide a map or drawing if possible describing the location of the telecommunications facility.

see attached letter



Parents for the Elimination of the Schoolyard Tower
P.O. Box 4817, Laguna Beach, CA 92652

September 2, 1996

I and our association Parents For the Elimination of the Schoolyard Tower wish to be a member of the Ad-Hoc Association of Parties Concerned About the Federal Communications Commission's Radiofrequency Health and Safety Rules and I subscribe to the Petition Of Reconsideration to Federal Communications Commission to be submitted by this association to the Commission.

I recognize David Fichtenberg as the spokesperson for this association in the matter of filing a petition for reconsideration of the Commission Final Rule and Order FCC 96-326, and in related matters.

I and my association represent the interests of hundreds of parents as who have supported our petition to have a wireless telecommunications facility removed from the school of the children of these parents. Our Association also has received the full support of this school's Parent Teacher Association. My child also attends this school. Children are not only affected while in their classrooms, but more so on the playground where there are no building materials to attenuate the signal strength. Also, as children go to and from school they are exposed. Thus, I and those whose interests I and my association represent are directly affected by the Commission's rule FCC 96-326 of ET Docket 93-62 and will directly benefit if the requests in this petition are granted.

Signed: Catherine Rowe

Catherine Rowe
Founder and Spokesperson for the Parents For the Elimination of the Schoolyard Tower

Address: PEST, PO Box 4817, Laguna Beach, CA 92652

**Exhibit B - Subsribers to the Petition for Reconsideration submitted by the Ad-Hoc Association
of Parties Concerned About the Federal Communications Commission's Radiofrequency
Health and Safety Rules et al**

**Subscription to the Petition For Reconsideration of the Ad-Hoc Association of Parties
Concerned About the Federal Communications Commission's
Radiofrequency Health and Safety Rules
et al**

I and familiar with and subscribe to the Petition For Reconsideration which is to be filed by the
Ad-Hoc Association of Parties Concerned About the Federal Communications Commission's
Radiofrequency Health and Safety Rules et al with regard to the Federal Communication
Commission Final Rule concerning ET Docket No. 93-62, FCC 96-326, in the Matter of
Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation.

Name: David Fichtenberg

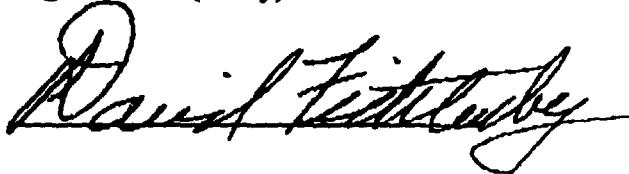
Address: P.O. Box 7577, Olympia Washington, 98707-7577

Date: August 28, 1996

Organization representing (if any): Washington Council For Safe Wireless Technology

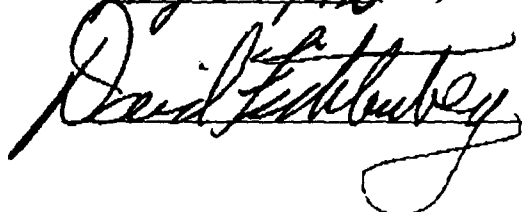
Position in organization (if any): Director

Signature:



Verification: I declare under penalty of perjury that the foregoing is true and correct. Executed

on Aug 28, 1996 (date)

 (Signature)

**Subscription to the Petition For Reconsideration of the Ad-Hoc Association of Parties
Concerned About the Federal Communications Commission's
Radiofrequency Health and Safety Rules
et al**

I and familiar with and subscribe to the Petition For Reconsideration which is to be filed by the
Ad-Hoc Association of Parties Concerned About the Federal Communications Commission's
Radiofrequency Health and Safety Rules et al with regard to the Federal Communication
Commission Final Rule concerning ET Docket No. 93-62, FCC 96-326, in the Matter of
Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation.

Name: BILL JENKINS

Address: P.O. Box 112
COSMOPOLIS, WN 98537

Date: 8-30-96

Organization representing (if any): COMM. WORKERS OF AMERICA
LOCAL # 7810

Position in organization (if any): PRESIDENT

Signature: Bill Jenkins

Verification: I declare under penalty of perjury that the foregoing is true and correct. Executed
on 8-30-96 (date)

Bill D Jenkins (Signature)

TO WHOM IT MAY CONCERN,

I, BILL JENKINS, AND OTHERS IN MY LOCAL
DO SERVICE WORK AT THESE WIRELESS TRANSMITTER
SITES. WE COULD BE AFFECT BY RULINGS AT
AFFECT SAFETY.

SINCERELY,

Bill W. Jenkins

PRESIDENT CWA LOCAL 7810

**Subscription to the Petition For Reconsideration of the Ad-Hoc Association of Parties
Concerned About the Federal Communications Commission's
Radiofrequency Health and Safety Rules**

et al

I and familiar with and subscribe to the Petition For Reconsideration which is to be filed by the
Ad-Hoc Association of Parties Concerned About the Federal Communications Commission's
Radiofrequency Health and Safety Rules et al with regard to the Federal Communication
Commission Final Rule concerning ET Docket No. 93-62, FCC 96-326, in the Matter of
Guidelines for Evaluating the Environmental Effects.

Name: Arthur Firstenberg

Address: P.O. Box 100404, Brooklyn, NY 11210

Date: August 30, 1996

Organization representing (if any): Cellular Phone Taskforce

Position in organization (if any): Chairman

Signature: Arthur Firstenberg

Verification: I declare under penalty of perjury that the foregoing is true and correct. Executed
on Aug. 30, 1996 (date)

Arthur Firstenberg (Signature)

I and familiar with and subscribe to the petition for reconsideration of the Federal Communications Commission's Ad-Hoc Association of Parties Concerned About the Federal Communications Commission's Radiofrequency Health and Safety Rules et al with regard to the Federal Communication Commission Final Rule concerning ET Docket No. 93-62, FCC 96-326, in the Matter of Guidelines for Evaluating the Environmental Effects.

Name: Cathy Bergman

Address: 410 West 53rd Street, #402
New York, NY 10019

Date: August 29, 1996

Organization representing (if any):

Position in organization (if any):

Signature: Cathy Bergman

Verification: I declare under penalty of perjury that the foregoing is true and correct. Executed
on August 29, 1996 (date)

Cathy Bergman (Signature)

**Subscription to the Petition For Reconsideration of the Ad-Hoc Association of Parties
Concerned About the Federal Communications Commission's
Radiofrequency Health and Safety Rules
et al**

I am familiar with and subscribe to the Petition For Reconsideration which is to be filed by the Ad-Hoc Association of Parties Concerned About the Federal Communications Commission's Radiofrequency Health and Safety Rules et al with regard to the Federal Communication Commission Final Rule concerning ET Docket No. 93-62, FCC 96-326, in the Matter of Guidelines for Evaluating the Environmental Effects.

Name: Marija Hughes

Address: 2400 Virginia Avenue, NW
Apt. C501
Washington, DC 20037

Date: August 28, 1996

Organization representing (if any): Consumer Utility Board
NMR Alliance
Federation of Citizens Associations, Vice President

Position in organization (if any): Member

Signature: Marija Hughes

Verification: I declare under penalty of perjury that the foregoing is true and correct. Executed
on 8/28/96 (date)

Marija Hughes (Signature)



Parents for the Elimination of the Schoolyard Tower

Subscription to the Petition For Reconsideration of the Ad-Hoc Association of Parties

Concerned About the Federal Communications Commission's

Radiofrequency Health and Safety Rules

et al

I am familiar with and subscribe to the Petition For Reconsideration which is to be filed by the Ad-Hoc Association of Parties Concerned About the Federal Communications Commission's Radiofrequency Health and Safety Rules et al with regard to the Federal Communication Commission Final Rule concerning ET Docket No. 93-62, FCC 96-326, in the Matter of Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation.

Name: Catherine Rowe

Address: PEST P.O. Box 4817, Laguna Beach, CA 92652

Date: September 2, 1996

Organization representing: Parents For the Elimination of the Schoolyard Tower (PEST)

Position in organization: Founder and Spokesperson

Signature:

Catherine Rowe

Verification: I declare under penalty of perjury that the foregoing is true and correct Executed

on 9-2-96 **(date)**

Catherine Rowe **(Signature)**

**Exhibit C: Statement from Kelly Stewart of Kinkos regarding inability to deliver
Commission materials due to flooded roads and associated conditions because of
hurricane Fran.**

The Secretary
FEDERAL COMMUNICATIONS COMMISSION
1919 M Street N.W. Room 222
Washington, D.C. 20554

To The Commission:

Re: ET-Docket 93-62, filing of Petition for Reconsideration being submitted by David Fichtenberg

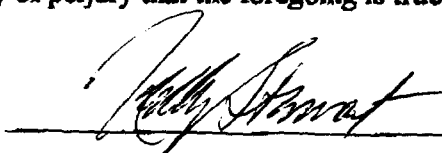
On September 6, 1996, I set out to deliver materials for Mr Fichtenberg that are titled Petition For Reconsideration regarding FCC Report 96-326 Submitted by the Ad-Hoc Association of Parties Concerned About the Federal Communications Commission's Radiofrequency Health and Safety Rules. I planned to deliver them to the office of the Secretary, Federal Communications Commission, 1919 M Street NW, Room 222 Washington DC 20054, and I expected to arrive at this address before the close of business that day (5:15 pm).

However, weather conditions due to hurricane Fran resulted in flooded streets and difficult road conditions so that I did not arrive in time to deliver Mr. Fichtenberg's Commission materials as planned. As requested by Mr. Fichtenberg, Kinkos plans to deliver these same materials which have been in our keeping, to the Commission today at the above address together with other materials which Mr. Fichtenberg faxed to us.

Respectfully,

Kelly Stewart
Employee at Georgetown Kinkos
3329 M Street N.W.
Washington, D.C. 20007

Verification: I declare under penalty of perjury that the foregoing is true and correct. Executed on September 9, 1996

 (signature)
Kelly Stewart